



No. 83-311

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1983

ABRAHAM STRASSNER,

PETITIONER,

v.

SELMA ROTHSTEIN STRASSNER,

RESPONDENT.

On Petition for Writ of Certiorari to
the New York State Appellate Division

REPLY BRIEF FOR PETITIONER

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CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amend-
ment V

No person shall be deprived of
property...without due process
of law. . . .

Replying to the history portion of
respondent's answer:

1. If respondent was the subject of cruel treatment including assaults and batteries, what then, persuaded her to return and live with the petitioner after the alleged Mexican divorce.

2. Respondent repeats that petitioner's attorney was Kenneth L. Shapiro; this repetition is essential to respondent's position because it was in front of this attorney that petitioner's signature on the alleged consent to the Mexican divorce action was procured. Respondent seeks to prove this allegation by the admission in evidence of a court file which contains this attorney's name typed in above the name of a law firm of which he was never a member. Petitioner submits herewith a copy of his attorney's card and has previously testified under oath that his attorney was not Kenneth L. Shapiro, but George Meissner. The burden

of proof in the court below was on the respondent herein, yet, the respondent failed to call Kenneth Shapiro as a witness. although respondent's attorney asked for an adjournment for the express purpose of calling such witness; to which petitioner's attorney consented.

3. Respondent's recitation of the facts concerning the meeting between the parties in July, 1970 is at variance with that of the petitioner. The rational way for a court to judge which version is correct, is to look at the actions of the parties which followed the meeting.

Petitioner contends that the fact that the parties lived together as husband and wife for almost eight (8) years after the alleged divorce, that respondent signed tax returns, procured insurance benefits, signed mortgages in two states under oath, and voted, all as the wife of the

petitioner, indicates that the respondent perpetrated upon the petitioner herein a fraud in obtaining a Mexican divorce, which fraud she sought to cover by the passage of time.

4. Petitioner further contends that at the time he signed the document in question he was without reading glasses and in fact did not see the nature of the document signed.

5. Respondent relies upon the fact that petitioner worked as a investigator for the District Attorney's office of Kings County, and for the Comptroller of the City of New York; and is a high school graduate. This is shown by the respondent in an attempt to prove that petitioner must have known what he was signing.

People in the midst of an emotional crisis caused by the flight of a long time mate are under such emotional stress as to

be able to sign documents without understanding their full meaning and import. When petitioner was asked at the trial why he signed the document in question (consent to appear in Mexican court) he stated, "Because I wanted my wife." Given the circumstances of the July, 1970 meeting between the parties, and the petitioner's version of what took place thereat, the signing of a document which would bring his wife back to him as his wife, is not incredible or incredulous, as the court below found.

6. Respondent avers that petitioner lives rent free at the home, when in fact, the mortgage costs and other expenses far exceed the rental income received by the petitioner.

CONCLUSION

WHEREFORE, petitioner respectfully
requests that the petition be granted.

Dated: New York, New York
October 26, 1983

ABRAHAM STRASSNER

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POINT I

JUDGMENTS OF FOREIGN NATIONS
ARE MERELY ENTITLED TO COMITY
AND NOT FULL FAITH AND CREDIT

The Court of Appeals has stated:

We are commanded by the Constitution to give full faith and credit to the judgment of a sister state - a command which has no relation, of course, to foreign nation divorce decrees.
Caldwell v. Caldwell, 298 N.Y. 146, 81 N.E.2d 60 (1948)

This principle has been re-stated more recently in Santamaria v. Santamaria, 74 Misc.2d 657, 345 N.Y.S.2d 906 (Nassau, 1973), wherein the court noted:

"T]here is a significant difference in the view of New York courts toward alien decrees and decrees of sister states. Whereas another state's divorce judgment entitlement to full faith and credit in New York is a profound principle upon which the federal system in this country rests, the court orders of foreign nations are respected only in so far as comity requires (numerous citations). Where a foreign country is but a brief haven for New York couples seeking divorce, and the family

resides in New York, there are important reasons for tipping comity considerations in favor of New York's power to enforce, supervise and modify the decree. 345 N.Y.S.2d at 910-911.

The court below, after a short hearing but after the solicitation of memoranda of law saw fit to render a decision granting full faith and credit to a Mexican divorce decree. This was done after the court withheld its decision for six months. It is abundantly clear that the court erred grievously in its decision in this matter as well as in its fact finding.

This Court should use its power over decrees which, on their face, are entitled merely to comity, to totally annul the decree and declare it obtained in fraud, as the facts herein demand.

Appellant is aware that even a decree of a sister state which would be entitled to full faith and credit, may be attacked collaterally for fraud, and certainly a

Mexican decree procured under the circumstances related herein and entitled, at best, to comity, may be attacked and overturned by the fraud demonstrated herein, as well as the lack of voluntariness of the consent alleged to have been obtained herein. See in this regard, Anello v. Anello, 22 A.D.2d 694, 253 N.Y.S.2d 759 (2nd Dept., 1964); Andrews v. Andrews, 188 U.S. 14, 23 S.Ct. 237, 47 L.Ed. 366; Hunt v. Hunt, 72 N.Y. 217 and Prime v. Hinton, supra.

POINT II

REAL PROPERTY HELD BY PARTIES AS TENANTS BY THE ENTIRETY IS NOT SUBJECT TO PARTITION

The Real Property Actions and Proceedings Law, Section 901 sets forth when an action for partition shall lie. Such statute does not grant the right of partition to property held as tenants by the entirety.

Since the alleged divorce in the instant case was obtained in a non-voluntary and fraudulent manner, no severance of the marital ties sufficient to permit the real property to be partitioned has occurred. See in this regard, Prime v. Hinton, supra, and Anello v. Anello, supra.